IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.341-DB-2000
Date of decision: 12.01.2007

Abu Saleem @ Abi Saloom.

-----Appellant.

Vs.

The State of Punjab.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. P.S. Hundal, Advocate
for the appellant.

Mr. M.S. Sidhu, Sr. DAG, Punjab.

Adarsh Kumar Goel, J.

This appeal has been preferred by the appellant-accused against his conviction under Section 21 of the ND&PS Act, 1985 (for short, "the Act") and sentence of RI for 15 years and fine of Rs. 1 lac and in default to undergo further RI for one year. According to the statement of Narinder Singh, PW-1, SI/SHO, P.S. Khem Karan made on 30.07.1997 at 4 A.M., which led to registration of an FIR No.60 dated 30.07.1997 at 4.25 P.M./5.25 P.M, he received information that some terrorists and smugglers were likely to enter India from Pakistan through Village Rattoke at the instance of Lakhbir Singh Rodeke with I.S.Y.P., RDX. and arms and ammunition to create disturbances in India by doing bomb-blasts. He along with other police and B.S.F. officials under the supervision of S.P., Darshan Kumar (HQ) Tarn Taran held a special Naka from 10 P.M. in the area of Village Rattoke from rear side of the Village on the way leading to border. At 12.10 at night, two persons came from the border side and when they were asked to stop, they took positions and started firing. Firing was returned by the Naka parties,

which continued for about 20-25 minutes. Thereafter, the said two persons stopped firing and stood up raising their hands and then they were taken into custody. The third person was behind who succeeded to run away in darkness. During investigation, name of one of the persons was found to be Sewa Singh son of Mohinder Singh, P.S. Noor Mahal, Distt. Jalandhar from whom an A.K.-56 rifle with 8 live rounds and a magazine of A.K.-56 was recovered from his right pocket with 25 live rounds. From his bag, 20 packets of RDX, one walkie-talkie set and two Panasonic batteries and 6 Time pencils were recovered. From the another pocket of the bag hanging on his shoulder, 20 packets of RDX, battery-charger and battery set, Cardenyal wire - 2 meters, battery device - 2 Nos. and battery circuit - 1 No. were recovered. From the pocket of his pant, electronic detonator - 9, safety fuse - 2, meter detonators - 10 and from his front pocket - 1 driving licence were recovered. A separate challan was filed against him. The other accused, was found to be Abu Saleem son of Mukhtiar Masih, resident of Ghurki, P.S. Barki, Distt. Lahore, Pakistan. The Investigating Officer, Narinder Singh asked the accused Abu Salim that he had the option to get the search conducted in the presence of a Magistrate or a Gazetted Officer and on the accused opting for a Gazetted Officer, vide Exh.PA, Surinderjit Singh Mand, DSP after recording his consent Exh.PB, got the search conducted in his presence. Search was conducted by Narinder Singh, SI, PW-1, who found 18 packets of heroine from the bag hanging on his right shoulder, out of which, samples of 10 gms. each were taken and converted into parcels and sealed with seals ‘SS’ and ‘NS’. 18 samples were then converted into one parcel. Case property was taken into custody vide Exh.PC. From the personal search of the said accused, a sum of Rs.135/- was recovered, which was taken into custody vide Exh.PD. Report Exh.PG was received from Forensic Science Laboratory and after completion of investigation the accused were challaned. One bag was also recovered near the barbed wire in the Indian territory which contained 18 packets of heroine, for which, separate proceedings were taken.

The accused was challaned under Section 21 of the Act, to which, he pleaded not guilty.

The prosecution examined PW-1, SI Narinder Singh and PW-2, S.S. Mand, DGP (D), apart from MHC Nazir Singh, PW-3 to prove affidavit Exh.PG, Baldev Singh LC, PW-4 to prove affidavit Exh.PH and Rishi Ram, Draftsman, PW-5 to prove site plan Exh.PF. In his statement under Section 313 Cr.P.C., the accused pleaded innocence and stated that he had been picked up by the police of Tarn Taran from Hoshiarpur and was falsely implicated.

Learned trial Court after considering the evidence on record held the case to be fully proved against the appellant and convicted and sentenced him as above. Following findings have been recorded:-

i) Statements of Narinder Singh, PW-1 and S.S. Mand, PW-2 fully proved that the recovery was effected from the accused. The nature of recovery was of contraband heroine. Their statements were believable.

ii) Immediately after recovery, Ruqa was sent to the police station, on which, FIR was registered and the accused was produced before the Illaqa Magistrate on the next date along with record and thus provisions of Section 57 of the Act were complied with.

iii) Sending of samples after 26 days to the office of Forensic Science Laboratory was not vital in the circumstances of the case.

iv) Provisions of Section 50 of the Act were fully complied with, which was proved by memo Exh. PA and omission of this fact in the FIR was not material.

v) Section 42 of the Act was not applicable where there was no prior information about possession of contraband.

We have heard learned counsel for the parties and perused the record.

Testimony of PW-1 Narinder Singh, SI fully supports the prosecution version that the accused was apprehended along with 18 packets of heroine in a bag on his right shoulder. Samples taken out from the said bags were sent for chemical analysis and as per the report Exh. PG, the same were found to be containing the diacetylmorphine. Samples were taken on the spot and were sealed. The contraband was also separately sealed and kept in safe custody. Recovery memos were drawn up. The entire operation was witnessed by PW-2, S.S. Mand, DSP. Message was sent to the police station, on which, FIR was registered. The accused as well as the other records were produced before the Magistrate on the next date. There is no suspicion about the truthfulness of the PW-1 and PW-2 on the question of apprehension of the accused and recovery of the contraband from him. They had no animosity against him whatsoever to falsely plant the contraband or to falsely implicate him in the present case.

Learned counsel for the appellant has not been able to point out any reason to interfere with the conviction of the appellant who is a Pakistani national and has not given any explanation. He happened to be in India without any permission.

In view of above, we are satisfied that conviction of appellant was justified and we affirm the same.

Learned counsel for the appellant, however, submitted that the packets recovered were never weighed and the quantum of heroine recovered is not known. It was submitted that in these circumstances, sentence of ten years will be justified. He relies upon the judgment of this Court in ***Inder Singh v. Inspector Customs, Raja Sansi Airport Customs Division, Amritsar*** 2004(2) RCR (Criminal) 203, wherein though recovery of heroine was 10.79 kg., sentence was reduced from 15 years to 10 years.

Learned counsel for the State has not been able to advance any serious objection to reduction of sentence from15 years to 10 years, as suggested by learned counsel for the appellant.

Accordingly, while upholding the conviction of the appellant, we reduce the sentence of imprisonment awarded to him from 15 years to 10 years. Sentence of fine is maintained.

The appeal is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

January 12, 2007
ashwani

(H.S. BHALLA)
JUDGE